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Attorneys for Plaintiff
MICROSOFT CORPORATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

FAME 1 COMPUTERS, INC., a
California corporation,

Defendant.

Case No. 2:17-cv-4464

COMPLAINT FOR:

- (1) **COPYRIGHT INFRINGEMENT**
(17 U.S.C. § 501 *ET SEQ.*)
- (2) **TRADEMARK INFRINGEMENT**
(17 U.S.C. § 1114)
- (3) **UNFAIR COMPETITION AND
FALSE ADVERTISING**
(15 U.S.C. § 1125(A))

1 Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against
 2 Defendant Fame 1 Computers, Inc. (“Defendant”), alleging as follows:

3 I. INTRODUCTION

4 1. This is an action for copyright infringement, trademark infringement,
 5 false advertising activities, false designation of origin, false description and
 6 representation of visual designs, imposition of a constructive trust, and an accounting
 7 of Defendant’s ill-gotten gains.

8 2. On information and belief, Defendant has installed and activated and
 9 attempted to activate hundreds of copies of unlicensed Microsoft software on
 10 hundreds of computer systems using unauthorized product keys, including product
 11 activation keys known to have been stolen from Microsoft’s supply chain.

12 3. On information and belief, Defendant subsequently distributed those
 13 systems to customers who were unaware they were receiving pirated and unlicensed
 14 software and were harmed as a result by Defendant’s misconduct.

15 4. On information and belief, Defendant’s software piracy was a
 16 systematic part of its business operations.

17 II. PARTIES

18 5. Microsoft is a Washington corporation with its principal place of
 19 business in Redmond, Washington. Microsoft develops, markets, distributes, and
 20 licenses computer software, among other products and services.

21 6. On information and belief, Defendant is a California corporation based
 22 in Tarzana, California. Defendant is a computer and technology company that
 23 specializes in computer-related maintenance services, including IT consulting,
 24 network security, and IT solutions. At various times relevant to this complaint,
 25 Defendant was and is in possession or control of the Internet Protocol (“IP”) address
 26 24.199.5.171 (the “IP Address”). The IP Address was used by Defendant in
 27 furtherance of the unlawful conduct alleged herein.
 28

III. JURISDICTION & VENUE

7. The Court has subject matter jurisdiction over Microsoft's claims for copyright and trademark infringement pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a). The Court also has subject matter jurisdiction under 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

8. The Court has personal jurisdiction over Defendant because it is incorporated and headquartered in the Central District of California, and otherwise does business in this District. According to the California Secretary of State's online records, Defendant business address is 18730 Oxnard Street, Suite 207, Tarzana, California.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) because Defendant is a resident of, or otherwise may be found in, the Central District of California.

IV. FACTS COMMON TO ALL CLAIMS

A. The Global Problem of Software Piracy

10. Software developers lose billions of dollars in annual revenue from software piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of copyrighted and trademarked software and related components. In 2015, the commercial value of pirated software in the United States exceeded \$10 billion.

11. One prominent form of software piracy is known as "hard-disk loading," the unauthorized commercial copying and installation of infringing software on devices which are often sold in competition with, and often for lower prices than, devices pre-installed with legally licensed copies of software.

12. Software developers, like Microsoft, are not the only victims of software piracy. Consumers are also victims, as they are often deceived by distributors of pirated software who go to great lengths to make the software appear genuine. These customers may unwittingly expose themselves to security risks associated with the use of pirated software. *See* Federal Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1, 2013, at <https://www.fbi.gov/news/stories/pirated-software-may-contain-malware1> (noting the relatively greater risk that pirated software is infected with malicious software, or “malware,” which can be used to record keystrokes and thus capture sensitive information such as user names, passwords, and Social Security numbers).

B. Microsoft’s Software and Intellectual Property

13. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft’s software programs are recorded on distributable media, such as DVDs, or are made available for download through various authorized distribution channels.

14. Microsoft holds a number of valid copyrights in its computer and server software, and it has duly and properly registered those copyrights with the United States Copyright Office, including, without limitation, the following:

15. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 8.1 (“Windows 8.1”). Windows 8.1 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 8.1 include Windows 8 and Windows 8.1 Professional. Microsoft holds a valid copyright in Windows 8.1 Professional, the most expansive version of Windows 8.1. As a result, Microsoft’s copyright in Windows 8.1 Professional encompasses all other versions of Windows 8.1. Microsoft’s copyright in Windows 8.1 Professional was duly and properly registered with the United States Copyright

Office. A true and correct copy of the Registration Certificate for Microsoft Windows 8.1 Professional, bearing the number TX 7-740-672, is attached as Exhibit 1.

16. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 7 (“Windows 7”). Windows 7 is available in a number of different versions including Windows 7 Ultimate, Windows 7 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid copyright in Windows 7 Ultimate, the most expansive version of Windows 7. As a result, Microsoft’s copyright in Windows 7 Ultimate encompasses all other versions of Windows 7. Microsoft’s copyright in Windows 7 Ultimate was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as Exhibit 2.

17. **Office 2013:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Office 2013 (“Office 2013”). Office 2013 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2013 include Office 2013 Professional, Office 2013 Home and Business, and Office 2013 Home and Student. Microsoft holds a valid copyright in Office 2013 Professional Plus, the most expansive version of Office 2013. As a result, Microsoft’s copyright in Office 2013 Professional encompasses all other versions of Office 2013. Microsoft’s copyright in Office 2010 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Office 2013 Professional, bearing the number TX 7-649-882, is attached as Exhibit 3.

18. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Office 2010 (“Office

2010”). Office 2010 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2010 include Office 2010 Professional, Office 2010 Professional Plus, Office 2010 Home and Business, and Office 2010 Home and Student. Microsoft holds a valid copyright in Office 2010 Professional Plus, the most expansive version of Office 2010. As a result, Microsoft’s copyright in Office 2010 Professional Plus encompasses all other versions of Office 2010. Microsoft’s copyright in Office 2010 Professional Plus was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Office 2010 Professional Plus, bearing the number TX 7-151-840, is attached as Exhibit 4.

19. **Windows Server 2012:** Microsoft has developed, advertises, markets, distributes, and licenses a line of server operating systems for business use called Windows Server 2012. Windows Server 2012 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Server 2012 include Windows Server Standard 2012 R2, Windows Server Standard 2012, Windows Web Server 2012 R2, and Windows Web Server 2012. Microsoft holds a valid copyright in Windows Server, which encompasses all versions of Windows Server. Microsoft’s copyright in Windows Server was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Windows Server 2012, bearing the number TX 7-622-123, is attached as Exhibit 5.

20. **Windows Server 2008:** Microsoft has developed, advertises, markets, distributes, and licenses a line of server operating system called Windows Server 2008. Windows Server 2008 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Server 2008 include Windows Server Standard 2008 R2, Windows Server Standard 2008, Windows Web Server 2008 R2, and Windows Web Server 2008. Microsoft holds a valid copyright in Windows Server, which encompasses all

versions of Windows Server. Microsoft's copyright in Windows Server was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Windows Server, bearing the number TX 6-880-740, is attached as Exhibit 6.

21. **Project Professional 2013:** Microsoft has developed, advertises, markets, distributes, and licenses a line of project management software called Project 2013. Project 2013 is available in two versions, each of which includes certain combinations of products, programs, and features. Versions of Project 2013 include Project Standard 2013 and Project Professional 2013. Microsoft holds a valid copyright in Project Professional 2013, which encompasses both Project Standard 2013 and Project Professional 2013. Microsoft's copyright in Project Professional 2013 was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Project Professional 2013, bearing the number TX 7-751-912, is attached as Exhibit 7.

22. Microsoft has also duly and properly registered a number of trademarks and service marks in the United States Patent and Trademark Office on the Principal Register, including without limitation:

- (a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- (b) "WINDOWS," Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- (c) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for computer software;
- (d) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for computer software;
- (e) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer productivity software;

- (f) "OFFICE 2010 DESIGN," Trademark Registration No. 4,029,299, for computer productivity software;
- (g) "OFFICE 2012 DESIGN," Trademark Registration No. 4,459,826, for computer productivity software;
- (h) "ACCESS," Trademark Registration No. 3,238,869, for computer database management software;
- (i) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556, for computer database management software;
- (j) "ACCESS LAUNCH ICON (2012)," Trademark Registration No. 4,365,955 for computer database management software;
- (k) "CAMERA TILE," Trademark Registration No. 4,415,986 for computer software for accessing and managing camera functions;
- (l) "CHARM BAR," Trademark Registration No. 4,489,348 for computer software operating system;
- (m) "EXCEL," Trademark Registration No. 2,942,050, for computer spreadsheet software;
- (n) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558 for computer spreadsheet software;
- (o) "EXCEL LAUNCH ICON 2012," Trademark Registration No. 4,355,451 for computer spreadsheet software;
- (p) "GAMES TILE," Trademark Registration No. 4,444,995 for computer software enabling access to online games;
- (q) "MAPS TILE," Trademark Registration No. 4,415,985 for computer software for mapping and directions;
- (r) "MESSAGING TILE," Trademark Registration No. 4,426,631 for computer software for text and multimedia messaging;
- (s) "MUSIC TILE," Trademark Registration No. 4,426,630 for computer software for downloading and listening to music and other audio content;

- (t) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for use in note taking;
- (u) "ONENOTE LAUNCH ICON 2010," Trademark Registration No. 3,905,559 for computer software for use in note taking;
- (v) "ONENOTE LAUNCH ICON 2012," Trademark Registration No. 4,351,584 for computer software for use in note taking;
- (w) "OUTLOOK," Trademark Registration No. 2,188,125, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (x) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No. 3,905,560, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (y) "OUTLOOK LAUNCH ICON 2012," Trademark Registration No. 4,355,446, for computer programs for providing enhanced electronic mail and scheduling capabilities;
- (z) "POWERPOINT," Trademark Registration No. 1,475,795, for computer software programs for creating presentations, graphics and videos;
- (aa) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No. 3,905,561, for computer software programs for creating presentations, graphics and videos;
- (bb) "POWERPOINT LAUNCH ICON 2012," Trademark Registration No. 4,385,388, for computer software programs for creating presentations, graphics and videos;
- (cc) "PROJECT LAUNCH ICON (2010)," Trademark Registration No. 3,938,763, for project management software;
- (dd) "PUBLISHER LAUNCH ICON 2010," Trademark Registration No. 3,909,142 for desktop publishing software;
- (ee) "PUBLISHER LAUNCH ICON 2012," Trademark Registration No. 4,355,448 for desktop publishing software;

(ff) “SPORTS TILE,” Trademark Registration No. 4,426,632 for computer software for viewing information and content about sports;

(gg) “VIDEO TILE,” Trademark Registration No. 4,412,218 for computer software for downloading and viewing video content;

(hh) “WINDOWS SERVER,” Trademark Registration No. 3,056,149, for operating system, computer and utility programs;

(ii) “WINDOWS STORE TILE,” Trademark Registration No. 4,552,497, for operating system software;

(jj) “WINDOWS VISTA,” Trademark Registration No. 3,424,198, for providing online information concerning computer operating system programs, and providing online technical support in the field of computer operating systems;

(kk) “WINDOWS VISTA,” Trademark Registration No. 3,235,107, for operating system programs;

(ll) “WORD LAUNCH ICON 2010,” Trademark Registration No. 3,909,143, for word processing software; and

(mm) “WORD LAUNCH ICON 2012,” Trademark Registration No. 4,355,444 for word processing software.

True and correct copies of the Trademark Registrations for (a) through (mm) above are attached as Exhibits 8 through 46, respectively.

C. Microsoft’s Distribution Channels for Software

23. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (OEM), volume licensing, subscriptions, and refurbisher channels.

24. The Original Equipment Manufacturer (“OEM”) distribution channel is one through which Microsoft software is distributed to computer and device

1 manufacturers called OEMs. OEMs customarily pre-install software on the devices
2 they build including, most commonly, the Microsoft Windows operating system.

3 25. The OEM distribution channel involves sub-channels that supply
4 Microsoft software to different categories of OEMs. Two of these sub-channels are
5 the Commercial OEM channel and the Direct OEM channel.

6 26. Through the Commercial OEM (“COEM”) channel, Microsoft
7 authorized distributors supply what is called “system builder” software to small and
8 medium-sized OEMs for pre-installation on devices.

9 27. Through the Direct OEM (“DOEM”) channel, Microsoft directly
10 provides software to large computer manufacturers, such as Dell and Lenovo, for
11 pre-installation on devices. The DOEMs acquire some components associated with
12 the Microsoft software from Microsoft Authorized Replicators (“ARs”).

13 28. In addition to the OEM channel, Microsoft offers a number of
14 subscription programs through which it provides software to qualified subscribers.
15 One example of a subscription program is the Microsoft Developer Network
16 (“MSDN”), which is for individuals and entities that develop third-party software
17 compatible with Microsoft software. MSDN subscribers are able to download
18 certain Microsoft software directly from Microsoft.

19 29. Microsoft also offers Volume Licensing (“VL”) programs for its
20 business customers. Through the VL program, customers purchase licenses for their
21 software and can add, remove, and upgrade their software as their business needs
22 evolve.

23 **D. Product Activation**

24 30. Like many other software developers, Microsoft has implemented a
25 wide-range of initiatives to protect its customers and combat theft and infringement
26 of its intellectual property. One important tool in Microsoft’s anti-piracy protection
27 arsenal is its product activation system, which involves the activation of software
28 through product keys.

1 31. A Microsoft product key is a 25-character alphanumeric string generated
2 by Microsoft and provided to customers and OEMs. Generally, when customers or
3 OEMs install Microsoft software on a device, they must enter a product key. Then,
4 as part of the activation process, customers and, in some cases, OEMs voluntarily
5 contact Microsoft's activation servers over the Internet and transmit their product
6 keys and other technical information about their device to the activation servers. The
7 majority of the activations involved in this matter contacted servers that are
8 physically located in Washington.

9 32. The activation process is analogous to the activation of credit cards or
10 mobile phones with a code provided by the financial institution or the mobile carrier.
11 Because Microsoft's copyrighted software is capable of being installed on an
12 unlimited number of computers, Microsoft relies on the product activation process to
13 detect piracy and protect consumers from the risks of non-genuine software.

14 33. In the OEM channel, each copy of genuine Microsoft Windows 8.1,
15 Windows 7, Office 2013, Office 2010, Windows Server 2012, Windows Server
16 2008, and Project Professional 2013 software, among others, is distributed with a
17 product key unique to that copy of the software—thus, for example, if a customer
18 purchases ten copies of Windows 7, the customer is supplied with ten unique product
19 keys. For Microsoft's subscription and VL programs, customers are normally
20 supplied a single product key for each version of Microsoft software they license.
21 For example, subscription and volume licensing customers receive one reusable
22 product key for all Office 2010 Professional licenses authorized under their
23 agreements to install and activate all copies.

24 34. Product activation works differently in the COEM and DOEM channels.
25 COEMs use individual product keys to install and, in some cases, activate the
26 software on the devices. DOEMs, on the other hand, either use a master key or a
27 separate file generated from Microsoft to install Windows software on each device.
28

E. Microsoft's Use of Cyberforensics to Combat Piracy

35. In order to combat the global threat of software piracy of its software, Microsoft relies on investigative methods that leverage state-of-the-art technology to detect software piracy. Microsoft refers to these methods as "cyberforensics."

36. As part of its cyberforensic methods, Microsoft analyzes activation data voluntarily provided by users when they activate Microsoft software, including the IP address from which a given product is activated. An IP address is a numerical identifier used to uniquely identify an internet-capable device when the device is connected to the Internet. An IP address is ordinarily assigned to an internet user (whether an individual or an entity) by the user's Internet Service Provider ("ISP").

37. Entities charged with managing and administering internet numbering resources, including IP addresses, publish information about IP address assignment and registration in publicly-searchable databases. Akin to an IP address "phone book," these databases can be used to associate each IP address with the individual or entity assigned to use that address. In some cases, the listed individual or entity is actually using the IP address; in other cases, the listed individual or entity is an ISP who has assigned the IP address to one of its customers. Thus, in some instances, the identity of the individual or entity associated with a particular IP address is publicly available; in other instances, the identity of the individual or entity can only be obtained from the ISP assigned to that IP address.

38. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft software and identify activation patterns and characteristics that make it more likely than not that the IP address associated with the activations is an address through which pirated software is being activated.

F. Defendant's Infringing Conduct

39. Microsoft's cyberforensics have identified over 1700 product key attempted activations (including over 700 successful activations) of Microsoft software originating from the IP address, which, on information and belief, is being

1 used by Defendant in furtherance of the unlawful conduct alleged herein. A
 2 meaningful volume of these activations have characteristics that, on information and
 3 belief, demonstrate that Defendant is using the IP Address to activate pirated
 4 software.

5 40. On information and belief, Defendant has activated and attempted to
 6 active copies of Windows 8.1, Windows 7, Office 2013, Office 2010, Windows
 7 Server 2012, Windows Server 2008, and Project Professional 2013 with product keys
 8 that have the following characteristics:

- 9 a. Product keys used more times than is authorized by the applicable
 10 software license;
- 11 b. Subscription program keys used in a manner that is not authorized by
 12 the applicable license (such as product keys intended for educational
 13 institutions used by commercial entities); or
- 14 c. Product keys used to activate software outside of the region for
 15 which it was intended.

16 41. On information and belief, each of these activations and attempted
 17 activations constitutes the unauthorized copying of Microsoft software, in violation
 18 of Microsoft's software licenses and its intellectual property rights.

19 42. On information and belief, Defendant has been and continues to be
 20 involved in installing counterfeit and infringing copies of Microsoft's software
 21 and/or related components.

22 43. On information and belief, Defendant has committed and continues to
 23 commit acts of copyright and trademark infringement against Microsoft. On
 24 information and belief, at a minimum, Defendant acted with willful blindness to, or
 25 in reckless disregard of, Microsoft's registered copyrights, trademarks, and service
 26 mark.

27 44. On information and belief, Defendant distributes products bearing
 28 Microsoft trademarks without a license or other authorization from Microsoft. This

1 unauthorized use of the world-famous Microsoft trademarks is designed to add
 2 credibility to Defendant's representations that it is a genuine supplier of Microsoft
 3 software and to confuse consumers about the source, sponsorship, affiliation and
 4 approval of the software and/or related components by Microsoft.

5 45. On information and belief, Microsoft has been harmed by Defendant's
 6 advertising activities, including the unauthorized use of Microsoft's trademarks to
 7 describe the items that Defendant is distributing.

8 **V. CAUSES OF ACTION**

9 **First Claim**

10 **Copyright Infringement - 17 U.S.C. § 501 *et seq.***

11 46. Microsoft specifically realleges and incorporates by reference each and
 12 every allegation contained in the Complaint as though fully set forth in this Claim.

13 47. Microsoft is the sole owner of Windows 8.1, Windows 7, Office 2013,
 14 Office 2010, Windows Server 2012, Windows Server 2008, and Project Professional
 15 2013, and of the corresponding copyrights and Certificates of Registration with the
 16 registration numbers listed above.

17 48. Defendant has infringed Microsoft's copyrights by reproducing
 18 Microsoft software in the United States of America without approval or authorization
 19 from Microsoft.

20 49. At a minimum, Defendant acted with willful blindness to, or in reckless
 21 disregard of, Microsoft's registered copyrights.

22 50. As a result of Defendant's wrongful conduct, Microsoft is entitled to
 23 recover its actual damages and Defendant's profits attributable to the infringement.
 24 Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

25 51. The award of statutory damages should be enhanced in accordance with
 26 17 U.S.C. § 504(c)(2).
 27
 28

52. Microsoft is further entitled to injunctive relief and an order impounding all infringing materials. Microsoft has no adequate remedy at law for Defendant's wrongful conduct because, among other things: (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value; (b) Defendant's infringement harms Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

Second Claim

Trademark Infringement – 15 U.S.C. § 1114

53. Microsoft specifically realleges and incorporates by reference each and every allegation contained in the Complaint as though fully set forth in this Claim.

54. Defendant's activities constitute infringement of Microsoft's federally registered trademarks and service mark with the registration numbers listed above.

55. Microsoft advertises, markets, distributes, and licenses its software and related components under the trademarks and service mark described above and uses these trademarks and service mark to distinguish Microsoft's products from the software and related items of others in the same or related fields.

56. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software programs and related components or services of Microsoft.

57. The infringing materials that Defendant has and is continuing to install are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

58. Further, Defendant's activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendant is installing originate with or are authorized by Microsoft, thereby harming Microsoft, its licensees, and the public.

64. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

65. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, and graphic images (collectively, "Microsoft visual designs") for its software programs and related components.

66. On information and belief, Defendant's wrongful conduct includes the distribution of products bearing Microsoft's marks, name, and/or imitation visual designs (specifically displays, logos, icons, and/or graphic designs virtually indistinguishable from Microsoft visual designs) in connection with their goods and services.

67. Upon information and belief, Defendant's wrongful conduct misleads and confuses their customers and the public as to the origin and authenticity of the goods and services advertised, marketed, installed, offered or distributed in connection with Microsoft's marks, name, and imitation visual designs, and wrongfully trades upon Microsoft's goodwill and business reputation. Defendant's conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

68. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

69. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its actual damages, Defendant's profits, and treble damages and attorney fees pursuant to 15 U.S.C. § 1117.

70. Further, Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, advertised, marketed, installed, offered or distributed by Defendant. Microsoft has

no adequate remedy at law for Defendant's wrongful conduct because, among other things: (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily-determinable market value; (b) Defendant's advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award; and (c) Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully prays for the following relief:

A. That the Court enter judgment in Microsoft's favor on all claims;

B. That the Court restrain and enjoin Defendant, its directors, principals, officers, agents, representatives, employees, attorneys, successors and assigns, and all others in active concert or participation with it, from:

(i) copying or making any other infringing use or infringing distribution of Microsoft's software and other intellectual property including but not limited to the software identified by the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(ii) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any Microsoft software or other intellectual property bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(iii) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered trademarks, service mark, or copyright including, but not limited to the Trademark, Service Mark, and Copyright Registration Numbers

1 listed above, in connection with the manufacture, assembly, production, distribution,
 2 offering for distribution, circulation, sale, offering for sale, import, advertisement,
 3 promotion, or display of any software, component, and/or other item not authorized
 4 or licensed by Microsoft;

5 (iv) engaging in any other activity constituting an infringement of any
 6 of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights
 7 in, or right to use or to exploit, these trademarks, service mark, and/or copyrights;
 8 and

9 (v) assisting, aiding, or abetting any other person or business entity in
 10 engaging in or performing any of the activities listed above;

11 C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17
 12 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Microsoft
 13 software and/or materials bearing any of Microsoft's trademarks or service mark, and
 14 any related item, including business records, that are in Defendant's possession or
 15 under their control;

16 D. That the Court enter an order declaring that Defendant hold in trust, as
 17 constructive trustees for the benefit of Microsoft, the illegal profits obtained from
 18 their distribution of counterfeit and infringing copies of Microsoft's software, and
 19 requiring Defendant to provide Microsoft a full and complete accounting of all
 20 amounts due and owing to Microsoft as a result of Defendant's unlawful activities;

21 E. That Defendant be required to pay all general, special, actual, and
 22 statutory damages which Microsoft has sustained, or will sustain, as a consequence
 23 of Defendant's unlawful acts, and that such damages be enhanced, doubled, or
 24 trebled as provided for by 17 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

25 F. That Defendant be required to pay to Microsoft both the costs of this
 26 action and the reasonable attorneys' fees incurred by Microsoft in prosecuting this
 27 action, as provided for by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and
 28

1 G. That the Court grant Microsoft such other, further, and additional relief
2 as the Court deems just and equitable.

3 DATED: June 15, 2017

DAVIS WRIGHT TREMAINE LLP
BONNIE E. MACNAUGHTON
ANNA R. BUONO
BROOKE E. HOWLETT

7 By: /s/ Bonnie E. MacNaughton
8 Bonnie E. MacNaughton

9 Attorneys for Plaintiff
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11 DAVIS WRIGHT TREMAINE LLP
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